

TRANSMITTAL SLIP

14 Sept 197

TO:

Mr. Coffey

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REMARKS:

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14 September. I have made attached
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REPLACES FORM 36-8
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04M

10 September 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Personnel Management and Work Stoppages

1. On 9 September 1970 I attended a meeting of the Executive Officers Group at the Civil Service Commission to consider the subject of illegal work stoppages. A considerable amount of the discussion was not directly pertinent to Agency problems, but there are enough lessons in the field of personnel management to make it worthwhile to note some of the points.

2. On the strictly legal aspects, William D. Ruckelshaus, Assistant Attorney General, Civil Division, Department of Justice, stated that at the earliest warning of trouble indicating possible strike the agency should advise Justice and it will consult with the agency's General Counsel. He warned, however, that the courts were no panacea and, in fact, usually complicated and sometimes frustrated administrative action. At the present time a number of courts which have taken jurisdiction over the subject matter have ordered that there will be no sanctions against employees while the matter is before the courts, and this could go on for years.

3. The courts vary in their approach. Some take the hard-line position that everyone involved in the strike should be fired; some consider the no strike statute unconstitutional; some ask why the Government comes in asking for back-to-work injunctions when the people will be fired upon return to duty. Obviously there is a paradox involved. Justice and the Civil Service Commission are considering proposals to change

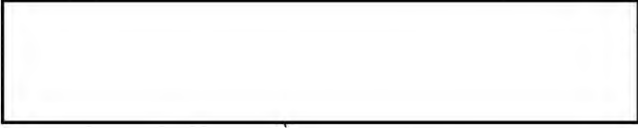
the present no strike law, 5 U.S.C. 7311, which provides that no one may accept or hold a position in the Government if he participates in a strike. They believe they will eventually propose a series of lesser sanctions before invoking dismissal action. Even under the present law, a person who is considered for termination for having gone on strike is entitled to the appropriate procedural safeguards in the course of such termination. In view of the recent court decisions, the Civil Service Commission is amending the present affidavit which goes with Standard Form 61 to eliminate portions having to do with advocacy of overthrow of the Government of the United States and asserting the right to strike as being in violation of the First Amendment. Appropriate instructions will be issued soon. New forms will not be out for possibly three months.

4. On the personnel management side, there was agreement among the experts that in all cases of a work stoppage there has been ample warning well in advance. Usually this warning comes as a result of union activity, but good management should be alert to the various other signs that trouble is brewing. In the Air Traffic Controllers strike the first warning was the slowdown several years ago when the Controllers "went by the book" and thereby delayed arrivals and departures to the maximum they could get away with. The next major warning came when they had a "sick out." Apparently in the last year or so management finally began taking remedial action and had cured most of the complaints, and the final strike this year was really a power play on the part of the union management. The union finally lost, and the Controllers returned to work. FAA now has the problem of what to do about them. There are about 3,000 workers involved, and the approach is as follows: Those who have claimed to be out ill will be treated liberally and any evidence of actual illness will be accepted. Those who merely followed the leaders are considered "misled" and will be punished by one day of suspension for each day of absence without leave. The personnel action cannot use the word "strike" as that would require termination. The leaders, some 50 or more, who actually initiated and managed the strike are going to be terminated. Mr. Ruckelshaus pointed out how important public opinion is in these cases, as the public did not support the Air Traffic Controllers. Furthermore, as a result of the earlier slowdowns, specific warnings had been given to all of the Controllers of their possible termination in the event of strike.

5. In the postal strike, while again there had been ample warning, the problem was basically one of adequate pay, and the final event of the work stoppages was almost a spontaneous explosion. In this case public opinion was strongly on the side of the workers, and in all probability no disciplinary action will be taken.

6. In some cases the courts played a part, as the union leaders indicated that a back-to-work order would be accepted by the members of their particular unions. These cases led the group to discuss causes and cures, and the consensus was the cause is basically the result of poor supervision and the failure to cure results from poor personnel management. Several of the experts said that a basic cause was the failure of low-level supervisors to realize there were some points which should be negotiated with employees and the resulting hard-line approach of refusing to listen. Compounding this was a general feeling by higher management that it had to back up the low-level supervisors, the result being an impasse leading to a strike. The basic lesson seems to be that top management in most Government agencies does not devote sufficient attention to personnel management and is not adequately trained in the techniques. This follows down the line, resulting in poor supervision at all levels.

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LAWRENCE R. HOUSTON
General Counsel

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